

# **The Infrastructure Expansion Act**

## **Sponsor: Rep. John J. Faso (NY)**

### ***Background***

Drafted in 1885, the New York State (NYS) Scaffold Law (Labor Law § 240/241) imposes “absolute liability” on both contractors and owners for gravity related injuries that take place at construction sites. This means that contractors/owners are 100% liable for any/all gravity-related injuries that occur, even if a worker’s own negligence contributed to such an incident.

The Scaffold Law’s requirement that contractors and property owners are strictly liable for any construction site injuries means the likelihood of a lucrative settlement is high and directly leads to a high number of injury lawsuits. As a result, NYS has the highest liability insurance costs of any state. The high cost of liability insurance makes all construction in NYS – residential, commercial, and governmental – more expensive.

NYS is currently the only state in the nation which imposes strict liability on construction accidents. Additionally, the Scaffold Law is the only area of civil liability in NYS in which comparative negligence, allowing a balancing of fault for an accident, does not apply.

### ***Legislative Impact***

The Scaffold Law makes all federally funded projects in NYS more expensive, wasting taxpayer dollars. For example, the ongoing construction costs (2013-present) of the New Tappan Zee Bridge in NYS could have been [reduced by an estimated \\$200 million](#), roughly 5% of the entire project, if the Scaffold Law had not been in place.

If enacted, the Infrastructure Expansion Act would impose a comparative negligence liability standard on all construction projects that receive federal financial assistance. Preempting the Scaffold Law in favor of a comparative negligence standard on all federally funded projects guarantees that all allocated funds are dedicated toward construction rather than artificially high insurance costs. Such projects include funding for transportation, housing, community development, and disaster relief. Similar limitations placed on federal funding have been upheld as constitutional by the Supreme Court of the United States. As part of *South Dakota v. Dole* (1987), the Supreme Court recognized Congress’ rights to influence state policy and control spending in relation to a 21-year-old drinking age and federal highway funding.

### ***Q: Won’t removing the Scaffold Law decrease worker safety?***

**A:** The claim by supporters of the Scaffold Law that absolute liability leads to fewer incidents of worker injury is not supported by the evidence. In fact, a [December 2013 study](#) conducted by Cornell University and the Rockefeller Institute of Government estimated that the Scaffold Law leads to an *additional* 677 construction injuries annually. Moreover, the last state to remove a similar liability standard, Illinois in 1995, saw a 26% reduction in fatalities over the next 5 years, per [Bureau of Labor Statistics data](#).

### ***Q: Why is this necessary?***

**A:** The Scaffold Law has negative effects upon all construction projects conducted in New York State. The 2013 Cornell study estimated that \$785 million is wasted by NYS taxpayers annually due to the Scaffold Law’s impact. Additionally, the New York State Builders Association estimates that home construction costs are driven up [by as much as \\$10,000](#) due to the Scaffold Law related insurance costs. Burdensome laws and regulations are crippling Upstate New York. The high cost of doing business is driving people away, which is why [46 of NYS’ 62 counties have lost population since 2010](#). Policies like the Scaffold Law must be changed to bring more and better opportunities for New York.